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DEC 28 2004

OFFICE OF PETITIONS

In re Application of :
Zaudtke et al. :
Application No. 10/682,349 : DECISION ON PETITION
Filed: October 9, 2003 :
Atty Docket No. 200304323-3 :

This is a decision on the "PETITION TO ESTABLISH PRIOR RECEIPT OF ITEM IDENTIFIED AS MISSING BY NOTICE OF OMITTED ITEMS," filed November 12, 2004. Applicants request that the above-identified application be accorded a filing date of October 9, 2003, with page 34 of the specification as part of the original application disclosure.

Application papers in the above-identified application were deposited on October 9, 2003. However, on September 8, 2004, the Initial Patent Examination Division mailed applicant a "Notice to File Missing Parts of Nonprovisional Application." Applicants were notified that the application papers had been accorded a filing date; however, page 34 of the specification appeared to have been omitted from the application.

In response, applicants timely filed the instant petition. Applicants asserts that page 34 of the specification was in fact deposited with the patent application on October 9, 2003. In support thereof, petitioner submits a copy of their return postcard receipt and a copy of the application, including page 34, as originally submitted. Alternatively, applicants note that the specification submitted in the present application (pages 1-35) is identical to pages 1-35 of the specification of prior application 09/583,671, which has been incorporated by reference.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the Office of Initial Patent Examination (OIPE) on October 9, 2003 and the papers submitted therewith assigned application No. 10/682349; 2) it specifically identifies the items being filed, including "Application for United States Letters Patent (including specification, claims and abstract) 42 pages" and 3) it lacks any annotation of non-receipt of any item denoted on the postcard. Thus, petitioner has shown that the items denoted were filed on October 9, 2003.

The application papers already considered received in the Office on October 9, 2003, were reviewed along with the missing page of specification submitted on petition. The papers received are numbered 1-33, 35-42. These papers together constitute the items described on the postcard receipt as "Application for United States Letters Patent (including specification, claims and abstract) 42 pages." Petitioner has shown that p. 34 of the specification was among the items present in the application on the date of deposit and should be included in the original application papers.

Accordingly, the petition is GRANTED.

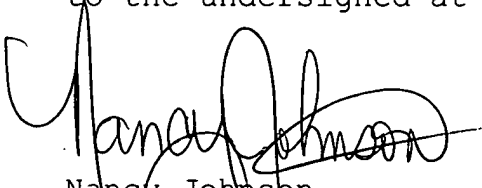
Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 20-1504, as authorized.

The Office of Initial Patent Examination (OIPE) has been advised of this decision. The application has, thereby, been forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of October 9, 2003, using the application papers received in the Office on that date and the missing page of specification resubmitted on petition filed November 12, 2004.

Applicants will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.



Nancy Johnson
Attorney Adviser
Office of Petitions